

AMENDED IN ASSEMBLY JULY 24, 1997

AMENDED IN ASSEMBLY JULY 7, 1997

AMENDED IN SENATE MAY 15, 1997

AMENDED IN SENATE APRIL 28, 1997

AMENDED IN SENATE APRIL 3, 1997

SENATE BILL**No. 795**

**Introduced by Senator Kopp
(Coauthor: Senator Hughes)**

February 26, 1997

An act to amend Sections 10153.6 and 10232 of, and to add Sections 10234.5, 10236.4, 10236.5, 10236.7, 10236.8, 10236.9, 10236.10, and 10236.11 to, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 795, as amended, Kopp. Real estate loans: mortgage loan broker requirements.

Existing law sets forth various requirements with respect to regulation of real property loans and, among other things, requires a real estate broker who meets specified criteria, including making 20 transactions in an aggregate amount in excess of \$2,000,000, *or making collections of payments in an aggregate amount of \$500,000 or more on behalf of owners or obligors of promissory notes secured directly or collaterally by liens on real property, owners or lenders of real property sales contracts, or both*, to file annual reports and periodic trust

fund status reports with the Real Estate Commissioner. *Existing law further provides that loans with certain lenders or purchasers shall not be used in determining whether the broker has met the criteria for purposes of the reporting requirement.*

This bill would ~~delete~~ revise those numerical and monetary limits thus requiring every broker placing ~~one~~ 10 or more loans in an aggregate amount of more than \$1,000,000 to comply with those reporting requirements. *It would lower to \$250,000 the aggregate collections of payments amount and make related changes. The bill would also add an institutional investor that issues mortgage-backed securities, as specified, to the list of lenders or purchasers whose loans shall not be used in determining whether the broker has met the criteria for reporting.* It would require a broker to list his or her license number on specified advertisements, and to send conformed copies of a deed of trust to the investor or lender and to the borrower within a reasonable amount of time. When he or she is no longer servicing or arranging loans, as specified, the broker would be required to notify the Department of Real Estate.

Existing law requires a real estate broker who accepts funds belonging to others to deposit those funds into a neutral escrow depository or trust account, as specified.

The bill would also require the maintenance of an interest bearing demand trust account by a licensed real estate broker conducting business as a mortgage loan broker for deposit of client funds that are nominal in amount or being held on deposit for a limited period of time, as specified. The interest earned on the accounts would be paid by depository institutions to the Department of Real Estate for maintenance of a toll-free telephone number and specified enforcement purposes. The department would be required to adopt implementing regulations. Certain of these requirements would be operative contingent upon the adoption of those regulations and the receipt of sufficient revenues to defray initial costs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 10153.6 of the Business and Professions Code is amended to read:

10153.6. All real estate broker licenses issued by the commissioner shall be for a period of four years.

Applicants shall qualify in the appropriate examination and satisfy all other requirements prior to issuance of the license.

The four-year license may be renewed upon filing the required application and fee, and complying with the provisions of Article 2.5 (commencing with Section 10170) and Section 10236.7.

~~SEC. 2. Section 10232 of the Business and Professions Code is amended to read:~~

~~10232. (a) Except as otherwise expressly provided, Sections 10232.2 and 10232.25 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:~~

~~(1) Negotiate a combination of one or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1:~~

~~(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.~~

~~(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.~~

~~(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.~~

~~(2) Make collections of payments on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.~~

~~(3) Make collections of payments on behalf of obligors of promissory notes secured directly or collaterally by~~

1 ~~liens on real property, lenders of real property sales~~
2 ~~contracts, or both.~~

3 ~~Persons under common management, direction or~~
4 ~~control in conducting the activities enumerated above~~
5 ~~shall be considered as one person for the purpose of~~
6 ~~applying the above criteria.~~

7 ~~(b) The negotiation of any new loan and sale or~~
8 ~~exchange of an existing promissory note and real~~
9 ~~property sales contract shall create a rebuttable~~
10 ~~presumption that the broker intends to negotiate new~~
11 ~~loans and sales and exchanges that will meet the criteria~~
12 ~~of subdivision (a).~~

13 ~~(c) In determining the applicability of Sections~~
14 ~~10232.2 and 10232.25, any loan or sale negotiated by a~~
15 ~~broker, or for which a broker collects payments or~~
16 ~~provides other servicing for the owner of the note or~~
17 ~~contract, shall not be used in determining whether the~~
18 ~~broker meets the criteria of subdivisions (a) and (b) if~~
19 ~~any of the following apply:~~

20 ~~(1) The lender or purchaser is any of the following:~~

21 ~~(A) The Federal National Mortgage Association, the~~
22 ~~Government National Mortgage Association, the Federal~~
23 ~~Home Loan Mortgage Corporation, the Federal Housing~~
24 ~~Administration, and the Veterans' Administration.~~

25 ~~(B) A bank or subsidiary thereof, bank holding~~
26 ~~company or subsidiary thereof, trust company, savings~~
27 ~~bank or savings and loan association or subsidiary thereof,~~
28 ~~savings bank or savings association holding company or~~
29 ~~subsidiary thereof, credit union, industrial bank or~~
30 ~~industrial loan company, commercial finance lender,~~
31 ~~personal property broker, consumer finance lender, or~~
32 ~~insurer doing business under the authority of, and in~~
33 ~~accordance with, the laws of this state, any other state, or~~
34 ~~of the United States relating to banks, trust companies,~~
35 ~~savings banks or savings associations, credit unions,~~
36 ~~industrial banks or industrial loan companies, commercial~~
37 ~~finance lenders, or insurers, as evidenced by a license,~~
38 ~~certificate, or charter issued by the United States or a~~
39 ~~state, district, territory, or commonwealth of the United~~
40 ~~States.~~

1 ~~(C) Trustees of a pension, profit-sharing, or welfare~~
2 ~~fund, if the pension, profit-sharing, or welfare fund has a~~
3 ~~net worth of not less than fifteen million dollars~~
4 ~~(\$15,000,000).~~

5 ~~(D) A corporation with outstanding securities~~
6 ~~registered under Section 12 of the Securities Exchange~~
7 ~~Act of 1934 or a wholly owned subsidiary of that~~
8 ~~corporation.~~

9 ~~(E) A syndication or other combination of any of the~~
10 ~~entities specified in subparagraph (A), (B), (C), or (D)~~
11 ~~that is organized to purchase the promissory note.~~

12 ~~(F) The California Housing Finance Agency or a local~~
13 ~~housing finance agency organized under the Health and~~
14 ~~Safety Code.~~

15 ~~(G) A licensed residential mortgage lender or servicer~~
16 ~~acting under the authority of that license.~~

17 ~~(H) A licensed real estate broker selling all or part of~~
18 ~~the loan, the note, or the contract to a lender or purchaser~~
19 ~~specified in subparagraphs (A) to (G), inclusive.~~

20 ~~(2) The loan or sale is negotiated, or the loan or~~
21 ~~contract is being serviced for the owner, under authority~~
22 ~~of a permit issued pursuant to Article 6 (commencing~~
23 ~~with Section 10237) or applicable provisions of the~~
24 ~~Corporate Securities Law of 1968 (Section 25000 and~~
25 ~~following of the Corporations Code).~~

26 ~~(3) The transaction is subject to the requirements of~~
27 ~~Article 3 (commencing with Section 2956) of Chapter 2~~
28 ~~of Title 14 of Part 4 of the Civil Code.~~

29 ~~(d) If two or more real estate brokers who are not~~
30 ~~under common management, direction, or control~~
31 ~~cooperate in the negotiation of a loan or the sale or~~
32 ~~exchange of a promissory note or real property sales~~
33 ~~contract and share in the compensation for their services,~~
34 ~~the transaction shall be allocated to each broker as though~~
35 ~~they alone had negotiated the loan or sale or exchange.~~

36 ~~(e) A real estate broker who satisfies the criteria of~~
37 ~~subdivision (a) or (b) shall, within 30 days thereafter,~~
38 ~~notify the Department of Real Estate in writing of that~~
39 ~~fact.~~

1 SEC. 2. Section 10232 of the Business and Professions
2 Code is amended to read:

3 10232. (a) Except as otherwise expressly provided,
4 the provisions of Sections 10232.2 and 10232.25 are
5 applicable to every real estate broker who intends or
6 reasonably expects in a successive 12 months to do any of
7 the following:

8 (1) Negotiate a combination of ~~20~~ 10 or more of the
9 following transactions pursuant to subdivision (d) or (e)
10 of Section 10131 or Section 10131.1 in an aggregate
11 amount of more than ~~two million dollars (\$2,000,000)~~ *one*
12 *million dollars (\$1,000,000)*:

13 (A) Loans secured directly or collaterally by liens on
14 real property or on business opportunities as agent for
15 another or others.

16 (B) Sales or exchanges of real property sales contracts
17 or promissory notes secured directly or collaterally by
18 liens on real property or on business opportunities as
19 agent for another or others.

20 (C) Sales or exchanges of real property sales contracts
21 or promissory notes secured directly or collaterally by
22 liens on real property as the owner of those notes or
23 contracts.

24 (2) Make collections of payments in an aggregate
25 amount of ~~five hundred thousand dollars (\$500,000)~~ *two*
26 *hundred fifty thousand dollars (\$250,000)* or more on
27 behalf of owners of promissory notes secured directly or
28 collaterally by liens on real property, owners of real
29 property sales contracts, or both.

30 (3) Make collections of payments in an aggregate
31 amount of ~~five hundred thousand dollars (\$500,000)~~ *two*
32 *hundred fifty thousand dollars (\$250,000)* or more on
33 behalf of obligors of promissory notes secured directly or
34 collaterally by liens on real property, lenders of real
35 property sales contracts, or both.

36 Persons under common management, direction or
37 control in conducting the activities enumerated above
38 shall be considered as one person for the purpose of
39 applying the above criteria.

1 (b) The negotiation of a combination of ~~five~~ *two* or
 2 more new loans and sales or exchanges of existing
 3 promissory notes and real property sales contracts of an
 4 aggregate amount of more than ~~five hundred thousand~~
 5 ~~dollars (\$500,000)~~ *two hundred fifty thousand dollars*
 6 *(\$250,000)* in any three successive months or a
 7 combination of ~~10~~ *five* or more new loans and sales or
 8 exchanges of existing promissory notes and real property
 9 sales contracts of an aggregate amount of more than ~~one~~
 10 ~~million dollars (\$1,000,000)~~ *five hundred thousand dollars*
 11 *(\$500,000)* in any successive six months shall create a
 12 rebuttable presumption that the broker intends to
 13 negotiate new loans and sales and exchanges of an
 14 aggregate amount that will meet the criteria of
 15 subdivision (a).

16 (c) In determining the applicability of Sections
 17 10232.2 and 10232.25, loans or sales negotiated by a broker,
 18 or for which a broker collects payments or provides other
 19 servicing for the owner of the note or contract, shall not
 20 be counted in determining whether the broker meets the
 21 criteria of subdivisions (a) and (b) if any of the following
 22 apply:

23 (1) The lender or purchaser is any of the following:

24 (A) The Federal National Mortgage Association, the
 25 Government National Mortgage Association, the Federal
 26 Home Loan Mortgage Corporation, the Federal Housing
 27 Administration, and the Veteran's Administration.

28 (B) A bank or subsidiary thereof, bank holding
 29 company or subsidiary thereof, trust company, savings
 30 bank or savings and loan association or subsidiary thereof,
 31 savings bank or savings association holding company or
 32 subsidiary thereof, credit union, industrial bank or
 33 industrial loan company, commercial finance lender,
 34 personal property broker, consumer finance lender, or
 35 ~~insurance company~~ *insurer* doing business under the
 36 authority of, and in accordance with, the laws of this state,
 37 any other state, or of the United States relating to banks,
 38 trust companies, savings banks or savings associations,
 39 credit unions, industrial banks or industrial loan
 40 companies, commercial finance lenders, or ~~insurance~~

1 ~~companies~~ *insurers*, as evidenced by a license, certificate,
2 or charter issued by the United States or a state, district,
3 territory, or commonwealth of the United States.

4 (C) Trustees of a pension, profit sharing, or welfare
5 fund, if the pension, profit sharing, or welfare fund has a
6 net worth of not less than fifteen million dollars
7 (\$15,000,000).

8 (D) A corporation with outstanding securities
9 registered under Section 12 of the Securities Exchange
10 Act of 1934 or a wholly owned subsidiary of that
11 corporation.

12 (E) A syndication or other combination of any of the
13 entities specified in subparagraph (A), (B), (C), or (D)
14 that is organized to purchase the promissory note.

15 (F) The California Housing Finance Agency or a local
16 housing finance agency organized under the Health and
17 Safety Code.

18 (G) A licensed residential mortgage lender or servicer
19 acting under the authority of that license.

20 (H) *An institutional investor that issues*
21 *mortgage-backed securities, as specified in paragraph*
22 *(11) of subdivision (i) of Section 50003 of the Financial*
23 *Code.*

24 (I) A licensed real estate broker selling all or part of
25 the loan, the note, or the contract to a lender or purchaser
26 specified in subparagraphs (A)—~~through (G)~~ to (H),
27 inclusive, of this subdivision.

28 (2) The loan or sale is negotiated, or the loan or
29 contract is being serviced for the owner, under authority
30 of a permit issued pursuant to the provisions of Article 6
31 (commencing with Section 10237) or applicable
32 provisions of the Corporate Securities Law of 1968
33 (Section 25000 and following of the Corporations Code).

34 (d) If two or more real estate brokers who are not
35 under common management, direction, or control,
36 cooperate in the negotiation of a loan or the sale or
37 exchange of a promissory note or real property sales
38 contract and share in the compensation for their services,
39 the dollar amount of the transaction shall be allocated
40 according to the ratio that the compensation received by

1 each broker bears to the total compensation received by
2 all brokers for their services in negotiating the loan or sale
3 or exchange.

4 (e) A real estate broker who on the effective date of
5 this section satisfies the criteria of subdivision (a) or (b)
6 shall, within 30 days thereafter, notify the Department of
7 Real Estate in writing of that fact. A broker who first
8 meets any of the criteria of subdivision (a) or (b) after
9 January 1, 1982, shall notify the department in writing
10 within 30 days after that determination is made.

11 SEC. 3. Section 10234.5 is added to the Business and
12 Professions Code, to read:

13 10234.5. In addition to the requirements of Section
14 10234, in the placing of any loan, a broker shall deliver
15 conformed copies of any deed of trust to both the investor
16 or lender and the borrower within a reasonable amount
17 of time from the date of recording.

18 SEC. 4. Section 10236.4 is added to the Business and
19 Professions Code, to read:

20 10236.4. (a) In compliance with Section 10235.5,
21 every licensed real estate broker shall also display his or
22 her license number on all advertisements where there is
23 a solicitation for borrowers or potential investors. In
24 addition, the broker shall disclose in any such
25 advertisement the toll-free telephone number
26 established by the department pursuant to Section
27 10236.5.

28 (b) The real estate broker shall additionally disclose
29 both the license number and toll-free telephone number
30 whenever a borrower or investor signs any documents
31 related to a loan negotiated by the broker.

32 SEC. 5. Section 10236.5 is added to the Business and
33 Professions Code, to read:

34 10236.5. (a) The department shall establish a toll-free
35 telephone number, the purpose of which is to enable the
36 public to ascertain whether or not a real estate broker is
37 in good standing with the department.

38 (b) The toll-free telephone number may be tied to a
39 voice mail system within the department and may be
40 used as a matrix of a threshold data base, through which

1 a person telephones the toll-free telephone number and
2 enters the license number through a touch-tone function
3 of his or her telephone.

4 (c) The department shall notify the caller through the
5 voice mail system as to whether or not the broker's filings
6 are current and whether there are any violations against
7 the broker.

8 (d) The telephone system provided for by this section
9 shall not commence operation until the department has
10 adopted procedures and regulations necessary to
11 implement the collection of funds under Sections 10236.8
12 and 10236.9, as required by Section 10236.10, and
13 sufficient revenues are received to defray initial costs.

14 SEC. 6. Section 10236.7 is added to the Business and
15 Professions Code, to read:

16 10236.7. A real estate broker shall notify the
17 department when he or she is no longer servicing or
18 arranging loans subject to the reporting requirements of
19 Section 10232. If a broker has already made reports
20 required by this article within the year, he or she shall
21 continue reports for that year, but shall notify the
22 department prior to the expiration of that year that he or
23 she will no longer be servicing or arranging loans for
24 which reports are required. The department's records,
25 including the telephone access system of the department,
26 may then be appropriately updated.

27 SEC. 7. Section 10236.8 is added to the Business and
28 Professions Code, to read:

29 10236.8. (a) In addition to the requirements of
30 Sections 10145 and 10232.25, a licensed real estate broker
31 conducting business as a mortgage loan broker shall
32 establish and maintain an interest bearing demand trust
33 account and shall deposit therein all mortgage loan
34 broker client deposits that are nominal in amount or
35 being held on deposit for a limited period of time. Those
36 funds may be deposited in a single unsegregated account.
37 The interest earned on the accounts shall be paid in
38 accordance with subdivision (c) of Section 10236.9 to the
39 Department of Real Estate to be used for funding a



1 toll-free telephone number and additional enforcement
2 efforts pursuant to Section 10236.5.

3 (b) Nothing herein shall prohibit a licensed real estate
4 broker from establishing one or more interest bearing
5 bank accounts or other trust investments as may be
6 permitted by the Department of Real Estate, with the
7 interest or dividends earned on the accounts payable to
8 clients for trust funds not deposited in accordance with
9 subdivision (a).

10 (c) The Department of Real Estate may formulate and
11 enforce rules of professional conduct pertaining to the
12 use by mortgage loan brokers of interest bearing trust
13 accounts for unsegregated client funds.

14 (d) Nothing herein shall affect or impair the
15 disciplinary powers and authority of the Department of
16 Real Estate or modify any statutes and rules governing
17 the conduct of licensed real estate brokers.

18 (e) As used in this section and Section 10236.9, a
19 licensed real estate broker is conducting business as a
20 mortgage loan broker if the broker ~~engages in the~~
21 ~~activities described in~~ *is servicing, selling, or arranging*
22 *loans subject to the reporting requirements imposed by*
23 *Section 10232, other than loans in which the lender or*
24 *purchaser is an entity described in subdivision (c) of*
25 *Section 10232.*

26 SEC. 8. Section 10236.9 is added to the Business and
27 Professions Code, to read:

28 10236.9. A licensed real estate broker conducting
29 business as a mortgage loan broker who establishes an
30 interest bearing demand trust account pursuant to
31 subdivision (a) of Section 10236.8 shall comply with all of
32 the following:

33 (a) The interest bearing trust account shall be
34 established with a bank or other financial institution as
35 authorized by the Department of Real Estate.

36 ~~(b) The rate of interest payable on any interest~~
37 ~~bearing demand trust account shall be 1.5 percent simple~~
38 ~~interest per annum. Higher interest rates offered by the~~
39 ~~institution to customers whose deposits exceed certain~~
40 ~~time or quantity qualifications, such as those offered in~~

~~the form of certificates of deposit, may be obtained by a mortgage loan broker if there is no impairment of the right to withdraw or transfer principal immediately, except as accounts generally may be subject to any statutory notification requirements, notwithstanding that interest may be forfeited thereby.~~

~~(e)~~

(b) The depository institution shall do all of the following:

(1) Remit interest on the average daily balance in the account, less reasonable service charges, to the Department of Real Estate, at least quarterly.

(2) Transmit to the Department of Real Estate with each remittance a statement showing the name of the mortgage broker for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any.

(3) Transmit to the depositing mortgage loan broker at the same time a report showing the amount paid to the Department of Real Estate for that period, the rate of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

SEC. 9. Section 10236.10 is added to the Business and Professions Code, to read:

10236.10. The Department of Real Estate shall adopt any regulations and procedures necessary to implement Sections 10236.8 and 10236.9 in order to ensure that the funds allocated herein are utilized to provide funding for the toll-free telephone number and additional enforcement efforts pursuant to Section 10236.5. In adopting those regulations and procedures, the department shall do the following procedures:

(a) Publish a preliminary draft of any such regulations and procedures for distribution, together with notices of the hearings required by subdivision (b), to depository institutions and to licensees of the department.

(b) Hold at least two public hearings, one in southern California and one in northern California, where affected and interested parties shall be afforded an opportunity to

1 present oral and written testimony regarding any
2 proposed regulations and procedures.

3 SEC. 10. Section 10236.11 is added to the Business and
4 Professions Code, to read:

5 10236.11. The requirements of Section 10236.9 shall
6 become operative only upon the adoption of a resolution
7 by the Department of Real Estate stating that regulations
8 have been adopted pursuant to Section 10236.10 that
9 conform those requirements to applicable tax and
10 banking statutes, regulations, and rulings.

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